

REACH

COPPER CONSORTIUM AGREEMENT

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**This most recent version includes amendments
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COPPER CONSORTIUM AGREEMENT

This Consortium Agreement (hereinafter “the Consortium Agreement” or “the Agreement”) is executed,

BY and BETWEEN

Those parties which have duly signed and executed this Agreement pursuant to Appendix 1

Hereinafter referred to individually as “Consortium Member” or “Member” and severally as “Consortium Members” or “Members”;

AND

the European Copper Institute (“ECI”)

Hereinafter referred to as the “Secretariat”;

Each of the above mentioned entities being hereinafter referred to individually as “Party” and severally as “Parties”.

PREAMBLE

Whereas EU Regulation 1907/2006/EC on Registration, Evaluation and Authorization of Chemicals (hereinafter the “REACH Regulation”) aims at ensuring a high level of protection for human health and environment, while promoting the efficient functioning of the EU internal market and stimulating innovation and competitiveness in the chemical industry;

Whereas the REACH Regulation places obligations on manufacturers and importers of chemical substances, concerning more specifically the registration of chemical substances on their own, in preparations or in articles;

Whereas the REACH Regulation provides for, amongst others, the obligation to share vertebrate animal studies, and to jointly submit part of the registration;

Whereas, considering the human and financial resources required by registration, together with the limited time to ensure compliance, it is necessary to increase and/or improve the efficiency of the registration preparation as well as cost-efficiency;

Whereas significant information, useful for registration purpose, is already available in the context of the Copper Voluntary Risk Assessment, progressed under Regulation 93/793/EC, or as a result of any work already undertaken in preparation to the implementation of the REACH Regulation;

Whereas the REACH requirements will affect directly or indirectly manufacturers and importers established within or outside the EU and any Only Representatives duly appointed to act on their behalf;

Whereas the Parties, having a common interest in fulfilling the requirements under REACH Regulation, wish to form a Consortium, whether or not established in EU;

THEREFORE THE PARTIES HAVE AGREED AS FOLLOWS:

1. DEFINITIONS

Any definition specified in Article 3 of REACH Regulation shall have the same meaning in this Consortium Agreement (including, amongst others, the definitions of Substance, Manufacturer, Importer and Downstream User). Furthermore, the following terms shall have the following meanings in this Agreement:

- “Affiliate” means those entities listed in Appendix 1 and any legal entity which controls, is controlled by or is under common control with, the referenced Member, or which together with the referenced Member is controlled by a dual-listed entity, with “control” meaning a combined voting stock of at least 50 (fifty) % in direct or indirect ownership, or the power to appoint more than half of the Board of Directors, or the right to manage the business of such entity.
- “Agency” means new European Chemicals Agency, based in Helsinki, to manage REACH implementation
- “Confidential Information “ shall have the meaning given to that term under item 1 of Appendix 4 to this Agreement.
- “Consortium” means the consortium of the Members formed pursuant to this Agreement .
- “Core Data” means data to be submitted jointly by Registrants pursuant to the REACH Regulation, and which include :
- Classification and Labelling of the Substances;
 - Study Summaries of Information derived from the application of Annexes VII to XI to the REACH Regulation;
 - Robust Study Summaries derived from the application of Annexes VII to XI, if so required under Annex I to the REACH Regulation ;
 - Testing Proposals where listed in Annexes IX and X to the REACH Regulation ;
- being understood that the scope of the Core Data shall correspond to the requirements of REACH applicable to a Member manufacturing or importing the specified highest tonnage band of any Substance covered by this Consortium Agreement.
- “Deadline for Registration” means the date by which the Substances covered by this Consortium Agreement must be registered at the latest applicable to a Member manufacturing or importing the specified highest tonnage band of any Substance covered by this Consortium Agreement.
- “Disclosing Party” means any natural or legal person that discloses Information

	in the framework of this Consortium Agreement.
“General Assembly”	means all the Members of the Consortium pursuant to article 5.1 of this Agreement.
“Information”	means Studies and other tests, data and information made available to the Consortium by a Consortium Member or any third party, or generated by the Consortium within the framework of this Consortium Agreement, whether in writing, by email, by other tangible electronic storage medium, orally or visually. It also includes all statistics, information, data or conclusions that could be deduced from such Studies and other tests, data and information, which might be written, oral or visual information.
“Lead Registrant”	means the same as that stated in Article 11 (1) of the REACH regulation
“Member”	means, as more referred to in Article 4.1 of the Agreement, a Potential Registrant who is party to the Agreement, whether a Manufacturer or Importer of Substance(s) covered by this Agreement and established in the EU, or a Non-EU Manufacturer of such Substances represented in the Consortium either by an Only Representative or not.
“Non-EU Manufacturer”	means a non-Community Manufacturer as referred to in Article 8 of REACH Regulation.
“Only Representative”	has the meaning as per Article 8 of REACH Regulation.
“Potential Registrant”	means a Manufacturer or Importer established inside the EU, which either is manufacturing in or importing into the EU, or intends to manufacture in or import into the EU, or an Only Representative appointed by a non-EU manufacturer, each of which may register Substances under the REACH Regulation.
“Receiving Party”	means any party to this Agreement to which Information is made available in any manner whatsoever in the framework of this Consortium Agreement.
“Representative”	means a natural or legal person authorized to act on behalf of a Member.
“Secretariat”	means, as defined in 5.3.1 the European Copper Institute, tasked with the daily management of the activities of the Consortium and reporting to the Management Committee.
“Sub-Groups”	means groupings of similar substances, within the overall core data scope, that improve the cost effectiveness of dossier development and enable a more equitable distribution of costs amongst the members.
“Study(ies)”	means report, in written or electronic form, on investigations, tests, or other examinations (excluding or including vertebrate animals), which relate to intrinsic Substance properties or to the exposure assessment and risk characterisation in the Chemical Safety Report, and as such

are of relevance for registration pursuant to the REACH Regulation; these also include Study Summaries and Robust Study Summaries of the reports.

“Working Group(s)”

means a group or groups designated by the Management Committee to discharge certain functions pursuant to the purposes of the Consortium Agreement.

2. PURPOSE AND SCOPE OF THE CONSORTIUM

In the framework of this Agreement, the Consortium Members join forces in order to comply jointly with the requirements of the REACH Regulation for the registration of Substance(s), including the requirements for the pre-registration of the respective Substance(s).

The Parties to the Consortium Agreement undertake to use all reasonable efforts to ensure the appropriate and timely achievement of the Consortium purposes.

In particular, the Consortium Members undertake to pursue collectively the following purposes and objectives:

- a) Compile and assess existing Studies ;
- b) Prepare proposals for new testing not involving vertebrate animals and have such tests performed;
- c) Identify, propose and perform jointly vertebrate animal Studies for the registration purpose, when absolutely necessary and required according to the REACH regulation;
- d) Prepare the Core Data;
- e) Address technical issues in relation to registration;
- f) Develop read-across approach based on surrogate data;
- g) Assess opportunities for exposure-based waivers;
- h) Develop a uniform classification and labelling;
- i) Prepare jointly Chemical Safety Report and Guidance On Safe Use of the Substance;
- j) Coordinate the submission, by the Lead Registrant, of the Core Data;
- k) Register the Core Data before the Deadline for registration applicable to the Member with the highest tonnage band,

3. SUBSTANCE(S) COVERED BY THIS CONSORTIUM AGREEMENT

The Substance(s) covered by this Consortium Agreement are those listed in Appendix 2. These substances are listed in “Sub-groups” to facilitate selective participation by Members as provided for in Appendix 3.

4. CONSORTIUM MEMBERSHIP

4.1 Consortium Members

Members as defined here above are Potential Registrants who:

- (a) manufacture or import substances covered by this agreement which are subject to pre-registration and registration requirements under REACH; or

- (b) have publicly declared their intent to start manufacturing or importing substances covered by this Agreement, as notified to Consortium; and
- (c) commit to pre-register Substance(s) of their concern under this Consortium Agreement, except for the Intermediates, and
- (d) either belong to the founding Members of this Consortium, have been admitted later pursuant to Article 4.3, or have acquired membership pursuant to Article 4.4.

Only one legal entity per Group of Companies shall be admitted as Member of the Consortium. For such purpose, a legal entity shall be deemed to be a member of the same Group of Companies as the Member concerned as per the definition of "Affiliate" in Article 1.

Founding members are those Members who sign up to the Consortium on or before February 26th 2008 (date of 1st General Assembly).

4.2 Advisors

Advisors are natural or legal persons which may provide valuable input to the Consortium activities and which are designated by the Management Committee at its sole discretion. Advisors may participate in the General Assembly, the Management Committee and Working Group(s) under conditions to be agreed with the Management Committee on a case-by-case basis.

4.3 Admission of new Consortium Members

4.3.1 Admission of new Member

Membership shall be open to any natural or legal person that meets the definition and the criteria for Members stated in Article 4.1 (a) to (c).

Admission of a new Member shall be proposed by the Secretariat for approval by the Management Committee.

The new member category comes into force on February 27th 2008.

4.3.2 Commitment of new Member

To obtain Membership, any applicant shall sign a commitment to respect any and all terms and conditions as set out in this Consortium Agreement and shall therefore accept to pay (except in the case of Article 4.4) the compensation stated in Article 4.3.3.

4.3.3 Compensation due to current Members

Pursuant to the cost sharing mechanism(s) defined in Appendix 3 to this Agreement, any new Member shall pay as contribution to the Consortium:

4.3.3.1 The same payments they would have originally been liable for had they joined the consortium prior to February 26th 2008;

4.3.3.2 An additional "Advantage Compensation" in recognition of the input of human resources and information and knowledge made by Members

between the February 26th 2008 and the date of accession of the new Member: such Advantage Compensation shall be equivalent to 1% of the payment required under Article 4.3.3.1 per complete calendar month between March 1st 2008 and the date of accession.

After payment of its contribution, the new Member shall have the rights and obligations attached to its status of Member.

4.4 Transfer or Assignment of Membership (“Transfer”)

4.4.1 *Transfer of Membership*

A Member shall be entitled to transfer membership, including all rights and obligations related thereto under the Agreement, to another party subject to the following terms and conditions:

4.4.1.1. *Transfer in case of acquisition or merger with a third party, with prior written approval of the General Assembly*

Membership may be assigned to a third party, only if such third party meets and complies with the conditions stated in Articles 4.1. Transfer will be subject to prior written approval of the General Assembly as per Article 5.1.5.1.

4.4.1.2. *Transfer in case of acquisition or merger with a third party, without prior approval of the General Assembly.*

Membership may be assigned, without the prior approval of the General Assembly, in the context of the acquisition or merger of the Member, by or with a third party, provided however that new entity continues to meet and comply with conditions stated in Article 4.1.

4.4.1.3. *Transfer in case of acquisition, merger or change in control (“Change in Control”), by and with another Member:*

All the rights and obligations of a Member under this Agreement shall be automatically, without the prior approval of the General Assembly, assigned to another Member which is or becomes an Affiliate of that Member, at the effective date of the Change in Control. However, in such a case, the voting rights belonging to the controlled Member shall not be assigned to the controlling one and shall cease to exist at the date of such Change in Control.

4.4.1.4. Where a Member appoints an Only Representative to fulfil its obligations under REACH in relation to any of the substances covered by this Agreement, the rights and obligations and Consortium membership of a Member under this Agreement shall be assigned within a reasonable time to such Only Representative. The assigning member shall remain jointly and severally liable with the assignee for

all the assigning member's unpaid financial obligations due to the Consortium up to the date of assignment.”

In any case, Members affected by the above provisions of article 4.4.1 will not be entitled to any refund of monies.

4.4.2 The consent of the General Assembly shall not be required in the case of a Transfer of Membership in the context of restructuring Affiliates of a Consortium Member. In such case, provisions of Article 4.4.1.3 shall apply.

4.4.3 In any case, the General Assembly shall be notified, in writing and in due time, of any Transfer of Membership by the Consortium Member concerned.

4.5 End of Consortium Membership

4.5.1 *Withdrawal of a Consortium Member*

A Member may withdraw from the Consortium at any time by giving not less than 6 (six) months prior written notice of such withdrawal. Upon the effectiveness of withdrawal, such Member shall not thereafter have any rights or obligations under this Agreement, except such rights and obligations as shall have accrued to such Member up to the date of its withdrawal; such withdrawal shall not relieve it of any funding obligation to which it is committed up to the date of its withdrawal, in accordance with the conditions specified by the Management Committee pursuant Article 5.2.2 (q); nor shall such withdrawal entitle Member to any refund of any monies at any time paid by it to the Consortium; such withdrawal shall not relieve it of its obligations of confidentiality and non-disclosure under Article 5 and any other Survival Provisions (as per Article 10.3).

4.5.2 *Exclusion and Expulsion of a Consortium Member*

4.5.2.1. A Member shall be excluded from the Consortium if it no longer meets the Membership conditions stated in Articles 4.1 (a) to (c).

4.5.2.2. A Member may be expelled from the Consortium by decision of the General Assembly, on proposal of the Management Committee, in the event of a material breach by it of one or more provisions of this Consortium Agreement.

If the Management Committee reasonably believes a Member is in such material breach of the terms of the Agreement (the “Breaching Member”), the Management Committee shall direct the Secretariat to give the Breaching Member written notice thereof and that it has a fixed period of time (the “Remedy Period”) in which to remedy the breach. If, upon expiration of the Remedy Period, the Breaching Member remains in breach, then upon a vote of the General Assembly, on proposal of the Management Committee, the Breaching Member shall be expelled from the Consortium. Expulsion of the Breaching Member shall not relieve the Breaching Member

of any funding obligation to which it is committed up to the date of its expulsion; the Breaching Member shall not be entitled to any refund of monies at any time paid by it to the Consortium; expulsion shall not relieve it of its obligations of confidentiality and non-disclosure under Article 5 and any other Survival Provisions (as per Article 10.3).

4.5.3 Consequences of Withdrawal, Exclusion and Expulsion of Consortium Member

In the event of withdrawal, exclusion or expulsion, the rights and obligations of the withdrawing, excluded or expelled Member shall cease to exist at the date thereof, with the exception of the Survival Provisions to this Agreement (as per Article 10.3).

Furthermore, the remaining Members shall be entitled to make use of the contribution made available by the withdrawing, excluded or expelled Member under the conditions specified in this Agreement and provided that such Information has been fairly and duly compensated under the conditions defined in this Agreement.

5. ORGANISATION AND MANAGEMENT OF THE CONSORTIUM

5.1 General Assembly

In order to take strategic decisions and those decisions which are more specifically referred to as being under its competence, all Consortium Members are entitled to meet in the General Assembly.

5.1.1 Composition of General Assembly

Each Member shall appoint and mandate one Representative to the General Assembly. Such Representative shall have authority to commit the Member he/she represents in General Assembly decisions. Replacement of a Representative by the respective Member shall be possible, upon notice to the Secretariat.

An importer whose obligations under REACH are to be met by an Only Representative may participate in the General Assembly provided that the same Only Representative is a Member.

The Chairperson of the General Assembly shall be appointed by the General Assembly.

Secretariat personnel may participate, in an advisory capacity, in the activities of the General Assembly.

5.1.2 Meetings of General Assembly

5.1.2.1 Ordinary Meetings

Ordinary meetings of the General Assembly shall be held at least annually to receive reports on technical and financial progress, transmitted by the

Secretariat, and the performance and progress of the Consortium activities according to the work schedule.

The Management Committee shall submit to the General Assembly any proposals for General Assembly decisions.

5.1.2.2 Extraordinary Meetings

Extraordinary meetings of the General Assembly may be convened upon request of at least 3 (three) Members, or of the Management Committee, in the case agreed estimated deadlines or budgets are overrun, or any major unexpected event occurs in the performance of the Consortium activities.

5.1.2.3 Notice and Place of Meetings

Ordinary and Extraordinary meetings of the General Assembly shall be announced through written notification by the Secretariat.

The notice period shall be at least 28 (twenty eight) calendar days, or any agreed period, depending on the issue to be discussed.

Members may participate in Ordinary or Extraordinary meetings via teleconference.

Members may take General Assembly decisions by email. Requests from the Secretariat will allow a response time of fourteen (14) calendar days. The absence of a Member response will be noted, but will be recorded as a positive vote.

5.1.2.4 Minutes of Meetings

Minutes of General Assembly meetings, to include all decisions made, shall be written by the Secretariat which shall issue them promptly, for comments and/or approval, to the General Assembly. Comments and/or approval shall be returned to the Secretariat within 14 (fourteen) calendar days. No reply by the due date will be taken as signifying acceptance.

5.1.3 Voting

To vote, Members shall be represented at each meeting by their respective Representative, or by another representative provided the latter is able to show at the beginning of the meeting a duly signed proxy. A Representative may represent more than one Member providing he/she holds a duly signed proxy of each Member he/she is representing at the meeting. Such Representative shall have authority to commit the Member he/she represents in General Assembly decisions.

Each Member is entitled to one vote in any decision taken at a General Assembly meeting. A Representative shall be entitled to vote once for each Member he/she is representing.

A “Breaching Member”, as defined in Article 4.5.2.2, shall have no right to vote until such breach is resolved.

5.1.4 Quorum

The Quorum for a meeting of the General Assembly shall be 50 (fifty) % plus one of the Members present or represented. In case such quorum is not reached, another meeting shall be convened within 14 (fourteen) calendar days and that second meeting shall be deemed to have a quorum irrespective of the number of present or represented Members.

5.1.5 Decision Protocols

5.1.5.1 The General Assembly shall take necessary strategic decisions related to the Consortium, its objectives and activities, and shall, in particular, decide on proposals from the Management Committee [or on other subject matters the General Assembly wishes to treat per its agenda], on the following, but not exhaustive, matters:

- (a) Designation of the Member representatives participating in the Management Committee;
- (b) Designation of the Secretariat and the Lead Registrant(s);
- (c) Designation of the Certified Accountant;
- (d) Approval of financial affairs of the Consortium, including its budget, funding and accounts;
- (e) Approval of Core Data before joint submission to the Agency;
- (f) Approval of items to be jointly submitted, namely the Chemical Safety Report and the Guidance on Safe Use of the Substance;
- (g) Approval of Chemical Safety Report and the Guidance on Safe Use of the Substance before submission to the Agency;
- (h) Approval for possible protection of intellectual property rights (“IPR”);
- (i) Decision for right(s) of use of new Information jointly owned by Consortium Members (possible granting of Letters of Access);
- (j) Decision regarding Transfer of Membership;
- (k) Decision regarding expulsion of a Consortium Member;
- (l) Decision on the adaptation of the Consortium Agreement in the light of legislative and technical adaptation of the REACH requirements.
- (m) Decision of modification or amendment to any provision to this Consortium Agreement, and its Appendices;
- (n) Decision to end the Consortium and terminate the Consortium Agreement.

5.1.5.2. Decision proposals for the General Assembly will be prepared by the Management Committee. Proposals shall be laid down in specific documents and circulated to the Members by the Secretariat at least 14 (fourteen) calendar days in advance.

5.1.5.3. Decisions shall be taken by a qualified majority of 50 (fifty) % plus one of the voting Members present or represented, except for decisions related to points

(l) (m) and (n) of article 5.1.5.1 which shall be taken by a majority of 2/3 (two thirds) of the voting Members.

5.1.5.4. At the discretion of the Chairperson, Decisions of a General Assembly of Members may be taken by a written procedure, including e-mail, or by teleconference, provided that the decisions to be taken are notified to all members in advance and sufficient time is allowed for a response from Members. Decisions so taken shall be regarded as valid Decisions of the General Assembly. In any case the procedure in Article 5.1.2.4 shall apply.

5.2 Management Committee

Without prejudice to the competence of the General Assembly, in accordance with Article 5.1 here above, the General Assembly shall appoint a Management Committee authorised to take decisions on the daily management of the Consortium, in accordance with the following provisions.

5.2.1 Composition of Management Committee

5.2.1.1 Participants in Management Committee

The Management Committee shall consist of 6 (six) members, chosen by the General Assembly from the membership, representing a fair cross section of the sub-groups of substances defined in Appendix 2.

The replacement by a Member of a Representative elected to serve on the Management Committee shall require the approval of the General Assembly.

Secretariat personnel may participate, in an advisory capacity, in the activities of the Management Committee

5.2.1.2 Chairperson of Management Committee

Members of the Management Committee shall elect amongst themselves a Chairperson.

The Chairperson shall guide the Management Committee and organise its work with the assistance of the Secretariat.

5.2.2 Role of Management Committee

The Management Committee participants shall take the necessary decisions and make proposals to the General Assembly, for items under its competence. It shall in this regard particularly, but not exclusively, deal with the following:

- (a) Decision on the establishment, terms of reference and composition of any Working Groups;
- (b) Designation of Advisor(s);
- (c) Proposal of Designation of the Secretariat and the Lead Registrant(s);

- (d) Proposal of Designation of Certified Accountant(s);
- (e) Guidance of the day to day management of the Consortium carried out by the Secretariat, including the management of the financial resources of the Consortium, including proposals for budget, funding and accountancy, and proposals for licensing, from any third party, existing Studies or Information that can assist Consortium Members in pre-registration and registration purposes;
- (f) Coordination of, and guidance for, Information collection and sharing concerning Substance(s) covered by this Agreement;
- (g) Coordination and supervision of activities of the Secretariat, the Lead Registrant(s) and any Working Groups;
- (h) Proposal for additional Information and testing programs;
- (i) Approval of external consultants or contractors to perform technical and scientific tasks and as proposed by any relevant Working Group(s)
- (j) Proposal for Approval of the Core Data before joint submission to the Agency;
- (k) Proposal for Approval of items to be jointly submitted, being the Chemical Safety Report and the Guidance on Safe Use of the Substance;
- (l) Proposal for Approval of Chemical Safety Report and the Guidance on Safe Use of the Substance before submission to the Agency;
- (m) Proper communications between all Parties involved;
- (n) Arbitration in cases of disagreement or disparities within or between the Working Groups;
- (o) Proposals for possible protection of intellectual property rights (“IPR”);
- (p) Proposals for right(s) of use by third party of new Information jointly owned by Consortium Members (possible granting of Letters of Access); monitoring thereafter;
- (q) Decisions for acceptance of new Members;
- (r) Proposals regarding Transfer of Membership;
- (s) Proposals regarding expulsion of a Member, including specification of the conditions of such expulsion, in particular as to any funding obligation and right to use, cite or refer to Information;
- (t) Proposals for adaptation of the Consortium Agreement in light of legislative and technical adaptation of the REACH requirements
- (u) Proposals for modification or amendment to any provision of this Consortium Agreement, and its Appendices, if and when needed;

The Management Committee may delegate, by specific mandates, certain tasks to designated party(ies), such as, but not limited to, Working Group(s), acting within the limits defined in such mandate(s).

The Management Committee shall ensure the proper execution of the decisions of the General Assembly and of the Management Committee itself and for such purposes shall authorise the Secretariat to sign on behalf of the Consortium as required.

5.2.3 Meetings of Management Committee

5.2.3.1 Meetings

Meetings of the Management Committee shall be held at least every 6 (six) months to review, on the basis of the technical and financial progress reports transmitted by the Secretariat, the performance and progress of Consortium activities according to the work schedule and the development of the costs.

Meetings of the Management Committee shall approve the proposals to be made to the General Assembly and to approve, after completion of relevant work by any Working Group, activities such as the following:

- (a) Process for defining Information gaps, including the development of waivers and use of surrogate Information;
- (b) Defining test programs;
- (c) Analysis of tests results;
- (d) Compilation of Core Data;
- (e) Submission of Core Data to the Agency;
- (f) Response to request(s) for further information by the Agency.

5.2.3.2 Notice and Place of Meetings

Meetings of the Management Committee shall be announced through written notification by the Secretariat. The notice period shall be at least fourteen (14) calendar days, or any agreed period depending on the issue to be discussed.

Members may participate in meetings via teleconference.

5.2.3.4 Minutes of Meetings

Minutes of Management Committee meetings shall be written by the Secretariat which shall issue them promptly, for comments and/or approval, to the Management Committee. Comments and/or approval shall be returned to the Secretariat within maximum 14 (fourteen) days. No reply by the due date will signify acceptance.

5.2.4 Decision Protocols

5.2.4.1 Written decisions

All decisions of the Management Committee are to be recorded in the Minutes and communicated to the Membership. Such communication may be effected through a Consortium intranet site.

5.2.4.2 Quorum

The Quorum for meetings of the Management Committee shall be 50 (fifty) % plus one of its Members. In case such quorum is not reached, another meeting shall be convened within ten (10) calendar days and that second meeting shall be deemed to have a quorum irrespective of the number of present or represented Members.

Members of the Management Committee may be represented at each meeting by another Committee Member provided the latter is able to show at the beginning of the meeting a duly signed proxy of the former.

5.2.4.3 Voting rights

The Management Committee shall use its best endeavours to make decisions by consensus.

Each Member of the Management Committee is entitled to one vote.

A Member of the Management Committee shall not take part in a vote in the event of a conflict of interest or on matters in which such Member has no vested interest, e.g. a vote on a testing program which that Member does not require for registration purposes.

Decisions shall be taken by a majority of 50 (fifty) % plus one of the voting Members, present or represented at the meeting, entitled to vote on the decision. In the case of equal votes, the Chairperson of the meeting has no casting vote.

5.2.4.4 Remuneration

Members' participants in the General Assembly, members of the Management Committee and of the Working Groups shall not be entitled to any remuneration from the Consortium.

5.3 Secretariat

5.3.1 Role

The Secretariat shall be the European Copper Institute ("ECI"), which shall be responsible for the day to day management of the Consortium, in strict compliance with the mandate(s) given by the Management Committee or the General Assembly.

It shall conduct all normal activities of the Consortium, with the exclusion of activities exclusively reserved to the Management Committee, and shall in particular, without prejudice to other tasks under this Agreement:

- (a) Provide advice and support to the Management Committee;
- (b) Follow up the legislative and technical development of the REACH Regulation and inform any Working Group and the Management Committee about relevant new developments;
- (c) Follow up the progress of the technical activities of the Consortium and report on technical and financial aspects to any Working Group and the Management Committee;
- (d) Provide technical and administrative support to any Working Group;
- (e) Supervise external consultants and experts approved by the Management Committee;

- (f) Coordinate and provide guidance for Information collection concerning Substance(s) covered by this Agreement;
- (g) Maintain the accounts of the Consortium in accordance with Article 8.5.2. of this Agreement;
- (h) Provide to the Members, in so far as they are entitled in accordance with their respective sub group participation and tonnage payments, copies of all relevant communications between the Lead Registrant and the Agency;
- (i) Prepare and send invoices according to the agreed procedure;
- (j) Prepare, and follow-up, the finance plans (including budgets) of the Consortium for submission to the Management Committee;
- (k) Organise the review of the accounts by an external certified accountant;
- (l) Promote, if and when requested by Management Committee or General Assembly, Consortium membership towards potential new Members;
- (m) Represent the Consortium externally within limits determined by the Management Committee.

The Secretariat is accountable and shall report to the Management Committee for the achievement of its purposes as defined in this Article.

The Secretariat is responsible for receiving, collecting, recording and aggregating any information, including confidential and proprietary information, as well as sensitive business secrets and other information which if disclosed to other Member(s) might be regarded as a breach of competition law, and thereafter circulating and disclosing sufficient and appropriate information, as required for the purposes of the Consortium Agreement. The Secretariat shall be bound by the Confidentiality Agreement in Appendix 4.

The Secretariat shall respect all applicable requirements of Competition law.

5.4 Working Group(s)

In order to pursue the aims of the Consortium, the Management Committee may establish “Working Group(s)”, composed of one or more representatives of Members and Advisors. The Secretariat shall support each Working Group.

5.5 Lead Registrant(s)

The General Assembly shall appoint one Lead Registrant per substance from the membership.

The Lead Registrant(s) shall be a Member and shall be subject to the same rights and obligations as the other Members, in particular regarding confidentiality obligations.

In addition, the Lead Registrant(s) has the following specific obligations:

In accordance with the REACH Regulation, shall submit the Core Data and other information approved by the General Assembly for joint submission to the Agency on behalf of the Members (including any of their respective Affiliates which are

subject to registration), in the format specified by the Agency, on the date determined by the General Assembly.

Ensure that all Confidential Information is marked or identified as such and shall submit to the Agency any requested justification for non-disclosure of Information. To this end, the Lead Registrant(s) shall base itself on the direction of the Secretariat as to what information has been entrusted to it as confidential and how to deal with Confidential Information for the purpose of registration. No Confidential Information concerning other Members shall be disclosed to the Lead Registrant(s) for registration purposes.

Shall submit to the Secretariat copies of all documents sent to and received from the Agency in conjunction with joint submissions.

Shall, with the support of the Secretariat, use all reasonable efforts to make any appeals under REACH in the case of any rejection, objection, or request by the Agency or the Member State Authority relating to the Consortium's compliance with the requirements of REACH.

6. INFORMATION AND DATA SHARING

6.1 Right of Access to, and Use of, Existing Information - Ownership of Existing Information

6.1.1 Subject to compliance with the confidentiality provisions of this Agreement, the Parties undertake to provide the Consortium, through the Secretariat, with any existing Information significant or relevant for achieving the purposes of the Consortium. Each Member shall advise the Secretariat, in writing, of any information which cannot be made public pursuant to Article 119 of the REACH Regulation.

The Secretariat may enter into negotiations with the Member for an appropriate fee to be paid to the Member in order to obtain a licence for studies so provided.

The Secretariat may enter into negotiations with other REACH consortia to facilitate the exchange of generic information necessary to achieve the purposes of the Consortium.

6.1.2 Property rights (including intellectual property rights - "IPR") applicable to any existing Information made available in accordance with this Agreement shall remain with the Party who provided the Information. However, other Consortium Members shall have the right to use the Information jointly for the purpose of complying with the requirement(s) pursuant to the REACH Regulation, provided that they have shared individually in the cost of the Information in accordance with the cost sharing mechanisms agreed upon in this Agreement. This right of use shall extend to Affiliates of Consortium Members for the purpose of registration.

6.1.3 Rights to use (including to cite, or refer to) existing Information granted by the Consortium to third parties within the context of the REACH Regulation, for instance through a Letter of Access, shall be subject to prior written approval from, and appropriate compensation of, the Consortium Member who initially provided the Information to the Consortium.

Existing Information, owned by various Consortium Members, or by one (or several) Members and one (or several) third parties, can only be made available to the Consortium or its Members following prior written approval of all the owners.

6.1.4 The Parties undertake in favour of each other to respect the IPR of each of the Consortium Members (whether existing prior to the date of conclusion of this Agreement or acquired subsequently) and not to commit any act or omission which might prejudice a Party in the exercise or preservation of such IPR.

6.2 Ownership and Use of New Information developed by the Consortium

6.2.1 Members shall have joint ownership of the Information generated by the Consortium pursuant to this Agreement, to the extent that they share individually in the cost of the Information in accordance with the cost sharing mechanisms agreed upon in this Agreement.

The Consortium Members shall however have the right to use such Information for the exclusive purpose of fulfilling the requirements of the REACH Regulation.

Affiliates of a Member shall have the right to use the new Information for the purpose of fulfilment of their obligations pursuant to the REACH Regulation.

6.2.2 The General Assembly may decide to grant to third parties the right to use (including to cite or refer to) new Information under terms and conditions to be mutually agreed upon. Such third parties shall then execute a “Letter of Access” in the form attached to this Agreement in Appendix 5.

6.3 Licensing from Third Party

The General Assembly may decide to license from any third party existing Studies or Information that can assist members for pre-registration and registration purposes. Such licence shall be concluded by the Management Committee on behalf of the Consortium Members, under conditions agreed by the General Assembly. The Members have the right to use such jointly licensed Studies or Information to the extent they share individually in the licence costs in accordance with the cost sharing mechanisms agreed upon in Appendix 3.

7. CONFIDENTIALITY - NON-DISCLOSURE AND NON-USE OF CONFIDENTIAL INFORMATION

- 7.1 Each Party to this Agreement, including the Secretariat, agrees to be bound by the provisions of the Consortium Confidentiality, Non-Disclosure and Non-Use Agreement (“Confidentiality, Non-Disclosure and Non-Use Agreement”), a copy of which is attached as Appendix 4.
- 7.2 Should, in spite of the operation of the Secretariat, a party to this Agreement obtain, as Receiving Party, access to Confidential Information from any other party, the Receiving Party undertakes to return the information to the Secretariat and not to use or disclose such information to other parties to this Agreement or to third parties. The same applies to information explicitly declared confidential by a party and provided by that Party to the other Parties, unless prior written consent is obtained from the Disclosing Party.

Non disclosure among the parties and vis-a-vis third parties shall apply only to the extent permitted under the REACH Regulation, and provided that no other legal disclosure requirement applies. The Parties agree to use the Information disclosed to them exclusively for the purpose of the present Agreement.

Each Party undertakes to advise immediately the other Parties in writing of any unauthorised disclosure or misuse by any Party or third party of confidential or proprietary Information, as well as any request by Competent Authorities relating to the disclosure of that Information.

- 7.3 Each Party to the Agreement shall submit Information, which could be deemed to be sensitive in respect of commercial confidentiality and/or EU competition law, but which is necessary to achieve the purpose of the Consortium. Such submission shall be effected only through the Secretariat, which shall be obliged to make only non-confidential parts of such information known to the other Parties. The Secretariat must adopt procedures for receiving, recording and aggregating sensitive Information that effectively protects commercial confidentiality. The Secretariat shall be bound by a Confidentiality Agreement as set out in Appendix 4 and shall only disclose such data in aggregate form.

8. FINANCIAL RIGHTS AND OBLIGATIONS

Members shall bear the Consortium costs jointly.

8.1. Budget of Consortium

The budget of the Consortium shall be prepared by the Secretariat annually and reviewed with the Management Committee on a six-monthly basis.

8.2. Cost Sharing Mechanisms

The cost sharing mechanisms are set out in Appendix 3, corresponding to each of the sub-groups of Substances listed in Appendix 2.

8.3. Registration Costs

The registration fee(s) applicable to each registered Substance due to the European Chemicals Agency shall be borne by each legal entity to which they apply. Such fees are not included in any of the costs of the Consortium.

8.4. Invoicing, Payments and Late Payment Penalties

Invoicing shall be performed by the Secretariat. Invoices shall be sent to the Members every 6 (six) months, in January and in July. Members shall make the necessary payments no later than 2 (two) months after receipt of the invoice.

If payment is made after that period, interest equal to 1.5% per month shall be added monthly to the due sum and payment shall become immediate.

8.5 Accounting and Financial Controls

8.5.1 The General Assembly and the Management Committee shall ensure the Consortium and the Secretariat conduct their activities at all times in accordance with high standards of business ethics.

8.5.2 The Secretariat shall maintain the Consortium's accounts in accordance with generally accepted accounting principles and shall:

- (a) maintain full and accurate books, records, and accounts that shall, in reasonable detail, fairly reflect the cost sharing accounts of the Consortium Members and all transactions of the Consortium;
- (b) retain such books, records, and accounts for such period of time as may be required by law and thereafter for such period of time as may be reasonable;
- (c) devise and maintain a system of internal controls sufficient to provide reasonable assurances that transactions of the Consortium are executed in accordance with required authorisations;
- (d) present regular operating and development plans, annual or periodic budgets, to the Management Committee for endorsement and onwards to the General Assembly for approval under 5.1.5.1;
- (e) prior to the month of July of each calendar year, provide the Management Committee with an externally audited set of financial statements; and
- (f) cause to be prepared all periodic or special reports requiring Management Committee approval prior to filing.

9. UNDERTAKINGS

9.1 Representations and Warranties

Each Party to this Agreement represents and warrants to any other Party that:

- (a) It is a duly organised, validly existing entity of the type described in this Agreement and is in good standing under the laws of the jurisdiction of its formation, and that it has all requisite powers and authority to enter into and to perform its obligations under this Consortium Agreement;
- (b) Its execution, delivery, and performance of this Consortium Agreement have been duly authorised, and do not and will not (i) violate any law, rule, regulation, order, or decree applicable to it, or (ii) violate its bylaws or statutes;
- (c) There is no litigation pending or, to the best of its knowledge, threatened to which such Party or any of its Affiliates is a party that, if adversely determined, would

have a material adverse effect on the financial condition, prospects, or business of the Consortium, or that Party's ability to perform its obligations under this Consortium Agreement.

9.2 Compliance with Competition laws

Neither this Consortium Agreement nor anything contained in this Agreement is intended to restrict competition in any manner whatsoever. The Parties expressly undertake to comply with applicable rules on Competition Law, in particular but not limited to articles 81 and 82 of the EC Treaty, as well as any applicable national laws. For information, and without forming part of this Agreement or relieving Members of their legal obligations, Annex 1 contains Articles 81 and 82 of the EU Treaty.

The exchange of information required to operate this Consortium Agreement shall be limited to what is strictly necessary for achieving the purpose of the Consortium.

In particular, each Consortium Member agrees not to disclose to any other Consortium Member any information that relates in any way to production capacities, production volumes, sales volumes, import volumes, market shares, clients, pricing information or future business plans.

Should it become apparent at any time that, notwithstanding this commitment, this Consortium Agreement, any provision of this Consortium Agreement, or any activity or decision of the Consortium can have a potentially restrictive effect on open and fair competition, in breach of any statutory provision, each Party to this Agreement undertakes to take any steps necessary to remedy immediately that situation.

9.3 Liability

9.3.1 Liability of Consortium Members

Each Consortium Member shall comply, in an appropriate and timely manner, with all provisions of REACH Regulation that are required of it as well as those under this Agreement.

Consortium Members are required to exercise due care and diligence vis-à-vis other Members in observing the rights and obligations arising from this Agreement. To the extent not otherwise stipulated below, Consortium Members shall be liable to each other only in respect of wilful misconduct, fraud and/or gross negligence, for instance, in case of material breach of this Agreement by the non-payment of agreed fees or the non-respect of confidentiality obligations.

In any case, the liability of each Consortium Member shall be several and non joint.

In any case, no Member shall be liable for any loss of profit or loss of margin or for any indirect or consequential damages.

Each Individual Member further agrees that it shall indemnify and hold harmless the Secretariat and its officers, employees or consultants for any liabilities or claims

(including reasonable attorney fees and expenses incurred in defending against such claims) in connection with any damage or injury to the Individual Member or Third Parties, save for gross negligence or intentional misconduct.

9.3.1.1. *Liability related to use of Information*

Consortium Members shall be held liable for their respective misuse of Information made available or developed in the Consortium framework.

9.3.1.2 *Liability related to accuracy of provided Information*

Consortium Members shall assume liability for the accuracy or correctness of the Information they provide in the frame of this Consortium Agreement.

9.3.1.3 *Liability related to fulfilment of REACH Regulation's requirements*

Each Party to this Consortium Agreement is responsible for complying with its rights and obligations under the REACH Regulation, in as much as these rights and obligations are not expressly transferred to the Consortium in accordance with this Consortium Agreement.

This applies, in particular to Information which is to be submitted to the Agency within the Pre-Registration and Registration Dossiers in due time by each Member, as well as to communications with Downstream Users in the supply chain.

Each Party to this Agreement is liable vis-à-vis third parties within the scope of its responsibility, with respect to its activities and obligations, within (and outside) the scope and purpose of the Consortium.

9.3.2 *Liability of Secretariat*

The Secretariat shall use its best endeavours to facilitate the achievement of the purpose of the Consortium.

The Secretariat is accountable to the Management Committee.

The Secretariat shall bear no liability to any party for its actions taken in such capacity, with the exception of wilful misconduct, fraud, gross negligence, or serious actions incompatible with its mandate.

9.3.3 *Liability of Lead Registrant*

The Lead Registrant shall not be liable to an extent more than the liability of the Consortium Members, except in respect of liability attributable to wilful misconduct, fraud and/or gross negligence in its role as Lead Registrant.

10. DURATION, TERMINATION AND SURVIVAL PROVISIONS OF CONSORTIUM AGREEMENT

10.1 By mutual agreement, the entry into force date of this Agreement is November 21st 2007. The Agreement shall be signed by duly authorised representatives of all Parties to the Consortium Agreement.

10.2 This Agreement shall remain in full effect until terminated by decision of the General Assembly.

10.3 Provisions of this Agreement which by their nature extend beyond the expiration or termination of the Agreement and, in particular, those relating to the protection of confidentiality, Information ownership and use and settlement of disputes, shall survive the expiration or termination of the Agreement.

11. CONCLUDING PROVISIONS - MISCELLANEOUS

11.1 Good Faith and Fair Implementation

The Parties undertake:

- to use their best endeavours to enable the reciprocal rights and obligations of the Parties to be exercised;
- to observe the utmost good faith towards each other in all their dealings arising out of or in connection with this Agreement;
- not to do or omit anything which might prejudice or detract from the rights and interests of each other; and
- to use their best endeavours at all times to procure the effective implementation of this Agreement and to co-operate with each other to that end.

11.2 Legal Status

Each Party is and remains an independent contractor. No one Party nor its agents, employees, consultants or contractors are agents, employees or joint ventures of any of the other Parties, nor do they have any authority to bind the other Parties by contract or otherwise to any obligation.

The rights and obligations arising from this Consortium Agreement shall not result in the creation of a legal person distinct from the legal personality of the Parties. In external legal relations, the Consortium shall not act under its own name but as a community of all individual Parties to the Consortium Agreement. Collectively, the Consortium Members are subject to the rights and duties of the Consortium, on a non-profit basis.

It is not the intention of the Parties to create, nor shall this Consortium Agreement be deemed or construed to create a partnership, joint venture or association.

11.3 Successors and Assignees

Except as otherwise expressly provided herein, the provisions of this Agreement shall inure to the benefit of, and be binding upon, the successors, assignees, executors and administrators of the Parties hereto.

Each Party shall inform, on a timely basis, the Management Committee of any change in its legal status or Change in Control in order to discuss with Consortium Members any measure to be taken in order to safeguard each other's interests, especially with respect to confidentiality, termination or continuation of pending work, liability for agreed payments and the like.

11.4 Entire Agreement - Written Agreement

This Agreement constitutes the sole and entire agreement between the Parties in respect of the subject matter thereof and supersedes all prior contracts or agreements among such Parties with respect to such matters. This Agreement may not be modified, amended or otherwise varied, except by further written instrument executed by the duly authorised representatives of the Parties or by decision of the General Assembly, as per article 5.1.5.1 (l).

11.5 Severability

Neither Party shall be hereby required to perform any act which is or becomes invalid, illegal or unenforceable under the laws or regulations of any government. If any provision of this Agreement is or becomes invalid, illegal or unenforceable, the remaining provisions of the Agreement shall remain in full force and effect. Instead of the invalid, illegal or unenforceable provisions, admissible provisions shall be agreed upon by the Parties, which will come as close as possible to the initial intent.

11.6 No Waiver

No delay or failure by either Party to exercise or enforce at any time provision of this Agreement will be considered as a waiver thereof or of such Party's right thereafter to exercise or enforce each and every right and provision of this Agreement. No single waiver will constitute a continuing or subsequent waiver. No waiver will be effective unless it is in writing.

11.7 Language

During the performance of this Agreement, all correspondence, invoices and other documents shall be written in English language.

11.8 Notices

Unless otherwise stated herein, all notices required to be given under this Agreement shall be in writing and shall be sufficient if delivered in person or sent by mail, e-mail, or telefax to the other Party at the addresses available at the Secretariat.

Any Party may change its address by written notice to the Secretariat in the manner set forth above.

12. DISPUTE RESOLUTION - GOVERNING LAW

12.1 This Agreement is governed by, and all disputes arising under or in connection with this Agreement, shall be resolved in accordance with the laws of Belgium.

12.2 Without prejudice to provisions of Article 12.3 hereafter, any and all disputes, controversies or claims which may arise between the Parties in connection with the interpretation of any provision of this Agreement or its validity or enforceability, or the breach or termination of it, or the performance or non performance of any obligations under the terms and conditions of this Agreement, shall be settled by an amicable effort on the part of the Parties.

An attempt to arrive at a settlement shall be deemed to have failed as soon as one of the Parties so notifies the other Party in writing.

Should such amicable settlement fail, the dispute shall be settled by arbitration under the Rules of Conciliation and Arbitration of the International Chamber of Commerce. The decision of this Chamber shall be final and binding for all Parties to this Agreement.

The arbitration tribunal shall consist of three arbitrators: each Party designates one arbitrator; these two arbitrators then designate the third arbitrator who acts as chairperson; the chairperson shall have a university degree in law. The arbitration tribunal shall decide on the size and apportionment of the costs of arbitration including out-of-courts costs incurred by the Parties in accordance with the outcome of arbitration. The language of proceedings shall be English. The venue of arbitration shall be Brussels.

12.3 Any Party may apply to the Arbitrators or to a Court of law for any interim relief, and where an application is made to a Court of law, the Court shall decide upon which Party shall bear the cost of such application.

12.4 All details relating to the award and the proceedings shall be kept confidential and all hearings are to be held in camera.

12.5 Parties shall use reasonable endeavours to enable the arbitrators to consider the matter based on documents alone in order to save costs, although this Article does not intend to prevent any Party from calling witnesses and providing evidence in person should it so choose to do.

13. COUNTERPARTS

This Consortium Agreement shall be executed in a number of counterparts, which shall together constitute a single document, held by the Secretariat, as custodian of the Consortium Agreement. The Secretariat shall circulate one complete copy to all Members.

APPENDICES:

1. Signatures of the Consortium Members
2. Substance(s) covered by the Consortium Agreement
3. Cost Sharing Mechanisms
4. Confidentiality, Non-Use and Non-Disclosure Agreement
5. Letter of Access (Model)

ANNEXES:

1. Competition Law Guidelines
2. 2008 Budget Guidance

APPENDIX 1

Declaration and Signature of Consortium Member (1/2)

IN WITNESS WHEREOF, the undersigned executes this Consortium Agreement by the signature of its duly authorised representative(s), as of the date first mentioned above this signature.

<u>Date</u>	
<u>Name of Member</u>	
<u>Corporate address</u>	
<u>Represented by Name & Title</u>	
<u>VAT number (in EU)</u>	
<u>Affiliates Represented</u>	
<u>Company Name, Address and Local Contact Person, incl. telephone and email</u>	
<u>List all Affiliates - using separate page(s) as required</u>	
<u>Membership in Sub- Groups</u>	A) Copper Metal YES/NO B) Intermediates YES/NO C) Copper Slags Product YES/NO Delete as appropriate
<u>Signature(s)</u>	
<u>Name(s)</u>	
<u>Title(s)</u>	

ONE FORM PER MEMBER WILL BE SIGNED AND SENT TO THE SECRETARIAT WHICH SHALL ADD THE SIGNATURES OF ALL MEMBERS TO APPENDIX 1

Declaration and Signature of Consortium Member (2/2)

Substance - refer to Number (Nr) in Appendix 2	Registration Tonnage
Sub-Group A	
Copper	
Sub-Group B	
Intermediate 1	
Intermediate 2	
Intermediate 3	DELETED 17th October 2008
Intermediate 4	DELTED 6th April 2009
Intermediate 5	
Intermediate 6	
Intermediate 7	
Intermediate 8	
Intermediate 9	DELETED 17th October 2008
Intermediate 10	
Intermediate 11	
Intermediate 12	
Intermediate 13	
Intermediate 14	
Intermediate 15	
Sub-Group C	
Copper Slags Product	

The REACH guidance on registration tonnages for substances to be registered by December 1st 2010 (which will be most of the above), is that the tonnage shall be the average of the actuals for 2007, 2008 and 2009.

For the purposes of this Declaration, Consortium Members shall use the same average. Appendix 3 sets out the requirements for Members to update these tonnages.

The registration tonnage shall be the total of EU production plus imports into the EU for all Affiliates within the Member company.

APPENDIX 2 (revised 1st April 2009)

Substances covered by Copper Consortium Agreement

- In accordance with Article 3, the Substances listed below, are those covered by the Consortium. Since the initial agreement, in November 2007, the scope has been regularly updated to reflect the needs of the members, as well as the development of much clearer descriptions of the various intermediates.
- The Substances are categorised in three “Sub-Groups”. Members may choose to participate in one, two, or all three. Participation in a specific sub-group implies the right to use for itself or its Affiliates for Registration purpose, the corresponding Information prepared, and acceptance of the duty to share Consortium costs on the cost-sharing mechanisms set out in Appendix 3, specific to that sub-group.
- Substances may be added or deleted from a sub-group by decision of the General Assembly, based on a proposal from the Management Committee.

A. Sub-group “Copper Metal”

EC name	Substance covered/ synonyms	EC Number	CAS Number
Copper*	Copper metal (massive or powder form); copper cathode	231-159-6	7440-50-8

- “Copper Metal” defined as metal with copper content $\geq 99.90\%$
 - E.g. cathodes, fire-refined ingots, and unwrought shapes (billets, slabs or cakes, etc)
 - Strong expectation, based on Voluntary Risk Assessment, is that this substance, which contains $< 0.1\%$ materials of concern, will not require EU GHS classification in the massive form
- Other market materials, also referred to as copper (such as anodes and blister), have elemental copper contents $> 80\%$ and $< 99.90\%$
 - The Consortium combines these materials within a sub-group called Intermediate B1. It is expected that this sub-group will have multiple classification and labeling requirements under EU GHS. These will be linked to the various levels of materials of concern.

B. Sub-group “Intermediates”

These substances are considered UVCB (Unknown, Variable, or Complex reaction product or Biological material), principally due to the unknown and variable nature of their composition. The main identifiers for a UVCB substance under REACH should be specification of the source and process.

Due to the ambiguity of the description provided by former EINECS/ESIS*, the REACH Copper Consortium has prepared a more detailed description than the original EINECS/ESIS description.

Intermediate B1 - Copper Anode			
“Substance resulting from metallurgic processing of primary sources (copper matte obtained from copper ore/concentrate) and/or secondary sources (copper scrap and/or black copper) and including recycled intermediates (i.e. spent anodes and removal cathodes). Composed primarily of copper metal and copper oxides (> 80%) and containing other residual metals and their compounds”			
EC names (or recognized name)	Substance covered	EC Number / EINECS No.	CAS No.
Waste solids, purif'n. Cathode*	Removal cathodes	273-720-8	69012-20-0
Waste solids, copper refinery anodes*	Spent anodes	273-719-2	69012-19-7
Blister, copper **	Copper Blister	Not available	Not available
Anode, copper **	Copper anode	Not available	Not available

Intermediate B2 - Copper Matte			
“Substance resulting from metallurgic processing of primary and secondary sources. The matte is obtained from copper ore/concentrate and recycled materials. It is composed primarily of copper and copper, iron and lead sulfides with minor sulfides of other metals”			
EC names (or recognized name)	Substances covered	EC number / EINECS No.	CAS No.
Matte, copper*	Copper matte	266-967-8	6711 91 5
White matte, copper**	White matte	244-842-9	22205-45-4

Intermediate B3			
Substance Name: White Copper Matte - DELETED October 17 th 2008			

Intermediate B4			
Substance Name: Copper Cement -DELETED April 1 st , 2009			
“Product formed when pregnant solution is applied to metallic iron or zinc. Those are taken into solution, and copper and other metals precipitated”			
EC name	Substance covered	EC number / EINECS No.	CAS No.
Cement copper*	Copper cement	266-964-1	6711-88-0

* EINECS/ESIS descriptions as referred on the website of the European Chemical Bureau (ECB) at <http://ecb.jrc.ec.europa.eu/esis/>

Intermediate B5 - Black Copper, Copper Smelting

“Metallic substance produced by melting and/or processing of metallic (scrap) and/or oxidic copper bearing materials (slag, oxides, ashes). Black copper is composed primarily of copper, contains other residual ferrous and non-ferrous metals and may contain metal oxides and metal sulphides. Black copper will gradually be transformed into “blister copper” or “anode copper” with copper content >80%, during further metallurgical processes.”

EC name (or recognized name)	Substance covered	EC number / EINECS No.	CAS No.
Black copper, copper smelting**	Black copper	Not available	Not available

Intermediate B6 - Slimes, Copper Refining

“Slimes & sludges, from copper electrolysis processes: a complex combination of insoluble compounds produced by precipitation during the Copper electrolytic refining or wining processes. It consists typically of various metals (such as e.g. precious metals, copper, antimony, tin, selenium, tellurium, arsenic, lead and nickel), as well as their oxides and/or sulfates.”

EC names	Substances covered / synonym	EC number / EINECS No.	CAS No.
Slimes and sludges, copper electrolytic*	Anode slimes	266-972-5	67711-95-9
Slimes and sludges, copper electrolytic refining, decopperized*	Decopperized slimes	305-433-1	94551-87-8
Slimes and sludges, copper electrolytic refining, decopperized, arsenic-rich*		309-772-6	100995-81-1
Slimes and sludges, copper electrolytic refining, decopperized, Ni sulfate*		295-859-3	92129-57-2

Intermediate B7 - Speiss, Copper

“Product obtained and separated from copper matte during smelting of copper ores or copper-containing materials such as lead smelter dross. Consists primarily of copper arsenides and copper antimonides.”

EC name	Substances covered / synonyms	EC number/ EINECS No.	CAS No.
Speiss, copper*	Copper speiss, bottom alloy	273-836-9	69029-97-6

Intermediate B8 - Slags, Copper Refining

“Substance produced at high temperature in a liquid state, by melting mixtures of metal oxides and non-ferrous metals (from primary sources such as copper ores, matte, or anodes) or by oxidizing metals (from copper rich materials such as metals, alloys or metal oxides). Slag from copper refining contains relatively high amounts of copper oxides, and various amounts of other non-ferrous metals oxides”

EC names	Substances covered	EC number / EINECS No.	CAS No.
Slags, copper refining*	Slags from copper refining	266-970-4	67711-94-8
Slags, copper converter*		266-969-9	67711-93-7

Intermediate B9

Substance Name: Copper Slags, Product - DELETED May 27th 2008

Intermediate B10 - Scale (coating), Copper

“Residue produced at high temperature by melting or treating at a high temperature of metallic copper (metal, alloy, scrap). The intermediate consists of cuprous oxide and cupric oxide.”

EC names	Substance covered/synonym	EC number / EINECS No.	CAS No.
Scale (coating), copper*	Copper Slag, from fabricators	273-744-9	69012-45-9
Waste solids, copper-refinery*		273-718-7	679012-18-6
Waste solids, copper-casting*		273-717-1	69012-17-5
Copper, dross*	Ball mill dust	305-408-5	94551-59-4
Scale (coating), mill, copper*		305-427-9	94551-81-2

Intermediate B11 - Flue Dusts, Copper Refining

“Product recovered from exhaust gas streams found in furnaces, flues and setting chambers as a result of roasting, smelting and converting operations from Copper refining processes. Constituents found as end products are dependent upon the materials used during the various operations”

EC names	Substances covered	EC number / EINECS No.	CAS No.
Flue dust, copper refining*	Flue dusts	266-966-2	67711-90-4
Wastes, copper-manuf, calcium hydroxide-treated*		302-676-5	94114-41-7
Slimes and sludges, copper	Off gas scrubbing	310-062-3	102110-61-2

conc. Roasting off gas scrubbing, lead-mercury-selenium-contg. *			
Slimes and sludges, copper-lead ore roasting, off gas scrubbing, arsenic-contg.*	Off gas scrubbing	310-063-9	102110-62-3

Intermediate B12 - Electrolyte, Copper Manufacturing, Spent			
“Spent electrolyte consisting of copper non-ferrous metal sulfates and sulfuric acid. It is produced as by-product during the electrolytic refining of copper, purified by physical treatment (demetalization) and prepared for re-use (closed circuit).”			
EC Names	Substances covered /synonyms	EC number / EINECS No.	CAS No.
Electrolytes, copper-manufg., spent*	Spent electrolyte; bleed, white acid	273-752-2	69012-54-0
Electrolytes, copper-manufg., spent, demetalised*	Spent demetalised electrolyte; black acid	273-716-6	69012-16-4

Intermediate B13 - Sulphuric acid, Waste Gas Washing, Copper Smelting			
“Solution obtained from the treatment (scrubbing and cooling) of the SO2 containing gasses from copper production processes. The solution can be used to produce gypsum or as a leaching agent, or can be thermally decomposed. It consists mainly of sulphuric acid and copper sulphate, and may contain other non ferrous metal compounds. Synonyms are weak acid, dilute acid, or bleed.”			
EC name	Substance covered /synonym	EC number / EINECS No.	CAS No.
Sulphuric acid, waste gas cooling and cleaning, copper smelting **	Weak acid, dilute acid, bleed	Not available	Not available

Intermediate B14 - ADDED October 17 th 2008 - Residues, leaching			
“Product obtained by leaching Nickel matte with chlorine or sulphuric acid. It is composed primarily of copper sulphide and sulphates.”			
EC name (or recognized name)	Substance covered	EC number / EINECS No.	CAS No.
Residues, Nickel matte leaching**	Copper containing residue from leaching	Not available	Not available

Intermediate B15 - ADDED October 17th 2008 - Cupro, copper processing

“Copper containing metallic substance obtained by reaction of silicon with a complex mixture of a copper, lead and tin containing alloy scrap. At high temperature, and if enough silicon is available, a copper containing liquid phase (called “cupro”) can be isolated. Cupro contains copper and residues of other ferrous and non-ferrous metals and their oxides. Cupro is sensitive to air oxidation at room temperature, resulting in a gradually transformation of the metals into their oxides. Cupro is further metallurgically processed to obtain “blister copper” and “anode copper” (>80% copper)”

EC name (or recognized name)	Substance covered	EC number / EINECS No.	CAS No.
Cupro, copper processing**	Cupro	Not available	Not available

C. Sub-group “Copper Slags Product” - ADDED May 27th 2008

Substance C1 - Slag, copper smelting

“Substance produced from heterogeneous mixture formed during the copper production, by reduction at high temperature in molten state (i.e. melting and processing in a furnace) or by flotation processes. Main constituents are silicon dioxides and iron oxides, with the amount of non-ferrous metal oxides reduced to the lowest extent economically and technologically viable”

EC name	Substance covered	EC number/ EINECS No.	CAS No.
Slag, copper smelting*	“Final” slag; high quality slag; decopperized slag	266-968-3	67711-92-6

* These names are official names, taken from the EINECS inventory

** These names are proposals, based on internationally accepted naming rules

APPENDIX 3

Cost-sharing Mechanism(s) for Copper Consortium Agreement

1. According to the Declaration contained in Appendix 1 and communicated by the Member to the Secretariat upon signature of the Agreement, or subsequently amended and communicated to the Secretariat, the Member may elect to participate in either one or more sub-groups as from time to time defined in Appendix 2. This choice will imply the right for itself, or its Affiliates, to use for the purpose of Registration the Information relating to the substance(s) in the respective sub-groups. Such election shall be deemed to indicate acceptance of the sharing of the costs specific to that or those sub-groups, in addition to the Type 3.2 costs of the Consortium as set out in this Appendix.
2. The share of the total costs declared by the Consortium and to be paid by each Member shall be calculated based on:
 - 2.1. the Tonnage Declaration contained in Appendix 1 and communicated by the Member to the Secretariat upon signature of the Agreement, as may be amended from time to time in accordance with Article 7 of this Appendix, and
 - 2.2. the annual budget of the Consortium, as approved by the General Assembly, and
 - 2.3. the specific cost-sharing mechanism(s) relative to the relevant sub-group(s) of Substances agreed by the relevant members in the Management Committee.
3. Consortium costs shall comprise three types:
 - 3.1. Historical costs (“Type 3.1 costs”), being a sum equal to the cost of the development and acceptance gathering of ECI’s Voluntary Risk Assessment for “Copper Metal”.
 - 3.2. Future generic annual consortium costs (“Type 3.2 costs”), for the provision by ECI of the services of the Consortium Secretariat, including administrative, accounting and technical support.
 - 3.3. Future annual research and analysis costs (“Type 3.3 costs”), for the further development of REACH registration dossiers for the sub-groups of products listed in Appendix 2.
 - 3.4. Type 3.2 and Type 3.3 costs shall be included in the annual budgets of the Consortium approved by the General Assembly. The Management Committee may fix the numerical values for the A € per tonne, B € per tonne and C € factors as defined in Articles 4.1 and 5.2 of this Appendix.

4. Apportionment of Type 3.1 Costs

- 4.1. A Member liable under Clause 4.1 to contribute to Type 3.1 costs shall make a single payment of A € per tonne, subject to a minimum amount, declared under Appendix 1 subject to Article 7 of this Appendix, unless:
 - 4.1.1. on 1 January 2008 the Member is a fully paid up mining or smelting/refining member of the International Copper Association, and remains so for the lifetime of this agreement, in which case the Member shall not contribute to Type 3.1 costs, or
 - 4.1.2. on 1 January 2008 the Member is a fully paid up smelting/refiner member or semi fabricator member of the European Copper Institute, and remains so for the lifetime of this agreement, in which case the Member shall not contribute to Type 3.1 costs.
- 4.2. All contributions received in respect of Type 3.1 costs under this Article shall not be regarded as income or assets of the Consortium but shall be credited to ECI for distribution, in proportions to be agreed by ECI, to its members which supported the Voluntary Risk Assessment for Copper Metal referred to in Article 3.1.

5. Apportionment of Type 3.2 Costs

- 5.1. Without prejudice to the powers of the General Assembly under Article 5.1.5.1 and of the Management Committee under Article 5.2.2 of the Agreement, an indicative budget for Type 3.2 costs during the first year's operation of the Consortium is set out for the purposes of guidance only in Annex 2.
- 5.2. Subject to agreement by the Management Committee, three quarters of Type 3.2 costs shall be allocated to the sub-group "Copper Metal" and one quarter to the sub-group "Intermediates". In the event that other sub-groups are created, Type 3.2 costs shall be reallocated by the Management Committee.
- 5.3. Type 3.2 costs shall be apportioned between Members at a rate of B €/T, subject to a minimum annual fee of C € per member; the values of B and C may differ for each sub-group at the discretion of the Management Committee.

6. Apportionment of Type 3.3 Costs

- 6.1. The cost sharing mechanism for Type 3.3 costs, approved by the General Assembly in respect of a specific sub-group, shall be borne by the participants of that sub-group, in proportion to their respective tonnage shares, subject to a minimum amount, in respect of each substance within that sub-group requiring such an expense.

- 6.2.** The minimum charge referred to in Article 6.1 of this Appendix shall be calculated as 50% of the total Type 3.3 costs in respect of any substance in any sub-group, divided by the number of Members in that sub-group.

Since Type 3.3 costs may arise sequentially, rather than all at once, there may be the need to retrospectively adjust Member costs once the total costs are known for a particular substance.

7. Declarations of Tonnages and Substances in Appendix 1

- 7.1.** In joining the Consortium, a Member shall complete the tonnage Declaration contained in Appendix 1 in respect of the relevant products and communicate this to the Secretariat. Except as herein provided, the Secretariat shall rely on that declaration for the purpose of calculating any contributions due from the Member.
- 7.2.** Any change in the Substances and tonnages originally declared by a Member on signature of this Agreement shall be promptly advised to the Secretariat.
- 7.3.** Upon formal request by the Management Committee, each Member accepts to submit to an independent audit of the Substances and tonnages declared to the Secretariat and registered at the Agency.
- 7.4.** In the event that a Member's final tonnage under its REACH registration with the European Chemicals Agency is higher than its initial declaration to ECI, under Appendix 1, that Member's contributions to Type 3.1 and Type 3.3 costs will be based on the higher number.
- 7.5.** In the event that a Member's final REACH registration tonnage with the European Chemicals Agency is lower than its initial declaration to ECI, under Appendix 1, that Member's contributions to Type 3.1 and Type 3.3 costs will be based on the initial number.
- 7.6.** Contributions to Type 3.2 costs will be based only on the initial tonnage declarations.
- 8.** While not forming part of this agreement, Annex 2 provides prospective Consortium Members with indicative numerical values for the A, B and C factors referred to in this Appendix. The final values will be fixed by the Consortium Members at the first General Assembly and may be modified thereafter.
- 9.** Nothing in this Appendix shall affect the obligations on Members joining the Consortium after February 26th 2008 under Article 4.3.3 of the Agreement.
- 10.** Any Advantage Compensation payments, made in accordance with Article 4.3.3.2, shall be used to reduce initially the Type 3.2 costs and then the Type 3.3 costs to all members of the relevant sub-groups in the following budget year.

APPENDIX 4

Confidentiality, Non-Use and Non-Disclosure for Copper Consortium Agreement

This CONFIDENTIALITY, NON-DISCLOSURE AND NON-USE AGREEMENT dated November 1 2007 (this “**Agreement**”) is among the Parties in the Consortium Agreement; hereinafter sometimes referred to individually as a “Party”, a “disclosing Party” or a “receiving Party” and collectively as the “Parties”.

WHEREAS the Parties are willing to cooperate with each other in the implementation of EU Regulation 1907/2006/EC on Registration, Evaluation and Authorisation of Chemicals (the “**REACH Regulation**”);

WHEREAS the Parties, having a common interest in fulfilling the requirements of the REACH Regulation, wish to form a consortium or consortia open to any entity able to facilitate, and cooperate in, the achievement of such purpose in accordance with terms and conditions to be mutually agreed under appropriate and relevant consortium agreement(s);

WHEREAS the Parties mutually have agreed, from the second half of 2006, to work together, under the guidance of the European Copper Institute, to prepare such consortium agreement and to have certain preparatory work performed to comply with the REACH Regulation; and therefore to disclose and exchange data and information which could be Confidential Information (as defined below); and

WHEREAS the foregoing is hereinafter referred to as the “**Purpose**”.

IN CONSIDERATION OF THE EXCHANGE OF CONFIDENTIAL INFORMATION, EACH OF THE PARTIES HAS AGREED TO EXECUTE THIS AGREEMENT AND TO AGREE AS FOLLOWS:

1. In this Agreement, “**Confidential Information**” shall mean all oral, written and/or tangible and (subject to paragraph 2 below) intangible technical, financial, business and/or other data, information or knowledge of whatever kind that is of confidential and/or proprietary nature -- including, but not limited to, any data, research and development results and test results, work product, analyses, compilations, studies, reports or other documents or records generated from such data and information. This Agreement shall also apply to information, which is not by its nature confidential but which a party to this Agreement wants to be kept confidential.
2. Confidential Information, subject to the restrictions in paragraph 3 below, shall be in writing or other tangible form (including electronic form), (i) clearly marked as “CONFIDENTIAL” or the like when disclosed to a receiving Party or, (ii) if not in tangible form (i.e. disclosed orally or observed), then identified as confidential when disclosed and confirmed as such in writing within 10 (ten) days after such disclosure. If a Party fails to clearly mark Confidential Information as “CONFIDENTIAL” (see above (i)) or fails to identify it as confidential within 10 (ten) days after disclosure (see above (ii)), neither any Party nor the Secretariat will be liable for any disclosure of such unmarked or unidentified Confidential Information to the Disclosing Party.
3. The Secretariat shall not make available confidential information obtained from one Member to any other Member or to any third party, except as provided by this Agreement
3. Should, in spite of the operation of the Secretariat, a party to this Agreement, as Receiving Party get access to Confidential Information with regard to any other party, the Receiving Party shall:

- hold all such Confidential Information confidential and set;
- use such Confidential Information only for the Purpose and in no direct or indirect manner detrimental to the disclosing Party;
- reproduce such Confidential Information only to the extent necessary for the Purpose;
- restrict disclosure of such Confidential Information to those of its directors, officers, employees, agents or representatives, including financial advisors, consultants and counsel (collectively, “**Representatives**”) who need to know such information for the Purpose. The Parties agree to inform their Representatives of the confidential and/or proprietary nature of the Confidential Information, to make them aware of this Agreement, and to require them to comply with this Agreement or equivalent obligations; each Party nevertheless being responsible to the disclosing Party for any breach of this Agreement by any of its Representatives;
- not disclose such Confidential Information to any third party without the prior written approval of the disclosing Party

A Party may however use the Confidential Information in a dispute between the Parties to enforce or defend its rights pursuant to this Agreement.

4. The foregoing restrictions on the disclosure and use of Confidential Information shall not apply to any information which is:
 - (a) at the time of disclosure to the receiving Party, known to such Party free from restrictions on disclosure or use, which shall be evidenced by documentation in such Party’s possession; or
 - (b) publicly known or later made generally public, through no wrongful act of the receiving Party; or
 - (c) developed by the receiving Party independently from Confidential Information received by it under this Agreement; or
 - (d) lawfully received, free from restrictions on disclosure or use, from a third party having the right to furnish such Confidential Information and who had not received it directly or indirectly from the receiving Party; or
 - (e) approved for release in writing by the disclosing Party.

5. In consideration of any Confidential Information received pursuant to this Agreement, the receiving Party undertakes, in the event that any Confidential Information received by it must be disclosed by law, governmental regulation or court order, to give the disclosing Party prior written notice thereof and co-operate with the disclosing Party in any attempt to test the requirement and/or to obtain a protective order.

6. No license to a Party under any trademark, patent, copyright or any other intellectual property right is either granted or implied by the disclosure of Confidential Information to such Party under this Agreement. None of the Confidential Information which may be disclosed or exchanged by the Parties hereunder shall constitute any representation, warranty, assurance, guarantee or inducement by either Party to the other of any kind and, in particular, with respect to the non-infringement of trademarks, patents, copyrights or any other intellectual property rights or other rights of third parties.

7. All Confidential Information shall remain the property of the disclosing Party and shall be returned by the receiving Party upon written request of the disclosing Party. However, the receiving Party shall be entitled to retain one set of copies of Confidential Information for archive purposes in its legal department.

8. Without prejudice to the restrictions on confidentiality and use contained herein, nothing in this Agreement shall be construed as restricting or prohibiting any Party from carrying out its usual business.
9. This Agreement constitutes the entire understanding and agreement among the Parties as to Confidential Information related to the Purpose and replaces all prior discussions among the Parties relating thereto.
10. Neither this Agreement nor any rights or obligations hereunder may be assigned by any Party to any third party without the prior written consent of the other Parties. If a Party assigns this Agreement or any of its rights or obligations hereunder to a third party with the consent of the other Parties, the assigning Party and the third party assignee shall be jointly and severally liable to the other Parties for compliance with all of the obligations so assigned by the assigning Party to the third party assignee.
11. No amendment or modification of this Agreement shall be valid or binding on the Parties unless made in writing and signed on behalf of each of the Parties by their respective duly authorised officers or representatives.
12. This Agreement shall be valid and binding on a Party for period of 20 (twenty) years after its execution by that Party, or any other period of time mutually agreed by all of the Parties.
13. This Agreement is construed and interpreted in accordance with the laws of Belgium.
14. All disputes arising out or in connection with this Agreement that cannot be settled amicably between two or more Parties shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce, by an Arbitration Tribunal of three Arbitrators appointed in accordance with the said rules. The language of arbitration shall be English. The venue shall be Brussels, Belgium.
The Parties may apply to the arbitrators or to a court of law for any interim relief, and where an application is made to the court of law, the court shall decide upon which Party shall bear the cost of such application.
All details relating to the award and the proceedings shall be kept confidential and all hearings are to be held in camera.
The Parties shall use their best endeavours to enable the arbitrators to consider the matter based on documents alone, in order to save costs, although this sub clause does not prevent any Party from calling witnesses and providing evidence in person should it so choose to do.

APPENDIX 5

Letter of Access (Model) for Copper Consortium Agreement

[Address of Regulatory Authority]

Letter of Access for registration of substance _____ *[insert the short name of substance to be registered]* under REACH Regulation 1907/2006/EC.

Dear Sirs,

The Consortium constituted on November 1 2007 on the registration of substance _____ *[insert the short name of the substance to be registered]* under REACH Regulation (hereafter referred to as “the Consortium”) agrees that the data, studies, summaries, waiving arguments, reasoning of testing proposals and/or assessments specified in detail below owned by Consortium Members and submitted by the Consortium in support of the registration under REACH Regulation:

Substance: _____ *[insert the exact name of the substance to be registered]*

(hereinafter collectively referred to as the “Dossier”), may be cited or referred to by

Applicant: _____ *[insert the name of the Legal Entity]*

in order to support Applicant’s registration of above mentioned substance under REACH Regulation.

The Dossier covers documents as follows: *[if reference is restricted to certain parts of the Dossier, insert exact name of the data, studies, summaries, waiving arguments, testing proposals and/or assessments]*

The right to cite or to refer to the Dossier is subject to the following restrictions:

1. The right of citation or referral only gives access to the Dossier of the Substance for the registration as specified above.
2. The right of citation or referral is solely granted in favour of *[Applicant]* and is not transferable to any other entity or person, without prior written consent of the Consortium Members.
3. *[Applicant]* is not authorised to receive any copies of the Dossier nor is *[Applicant]* authorised to inspect or view the Dossier or any related specific document in whole or in part *[Note: Depending on the agreement between the Consortium and [Applicant] the latter may receive the results and/or summaries/robust summaries of studies directly from the Consortium.]*
4. This Letter of Access shall in no event be construed as granting *[Applicant]* any property rights whatsoever in the Dossier.
5. Nothing in this Letter of Access shall require the Consortium to provide or to file any additional data.

The above right to cite or to refer to the Dossier is subject to the following terms and conditions: **[TO BE COMPLETED ; e.g. validity period, limitation of liability, etc.]**

ANNEX 1

Competition Law Guidelines - for information only, not an integral part of the agreement

The parties shall not make any agreements concerning coordination of conduct that restrict or affect competition within the meaning of Art. 81 EC Treaty; they shall observe the prohibition of abusing a market dominant position pursuant to Art. 82 EC Treaty:

Article 81

1. The following shall be prohibited as incompatible with the common market: all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the common market, and in particular those which:
 - (a) directly or indirectly fix purchase or selling prices or any other trading conditions;
 - (b) limit or control production, markets, technical development, or investment;
 - (c) share markets or sources of supply;
 - (d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
 - (e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.
2. Any agreements or decisions prohibited pursuant to this article shall be automatically void.
3. The provisions of paragraph 1 may, however, be declared inapplicable in the case of:
 - any agreement or category of agreements between undertakings,
 - any decision or category of decisions by associations of undertakings,
 - any concerted practice or category of concerted practices,which contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not:
 - (a) impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives;
 - (b) afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.

Article 82

Any abuse by one or more undertakings of a dominant position within the common market or in a substantial part of it shall be prohibited as incompatible with the common market in so far as it may affect trade between Member States.

Such abuse may, in particular, consist in:

- (a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;
- (b) limiting production, markets or technical development to the prejudice of consumers;
- (c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
- (d) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

ANNEX 2

Budget Guidance for Participation in Copper Consortium Agreement - for information only, not an integral part of the agreement

All Consortium costs require the approval of the membership through the General Assembly. However, without prejudice to that power, given the start up of this activity, and in order to provide prospective members with an approximation of their individual share of the consortium's various costs, the following guidance is offered by ECI. Reference is to be made to the categories defined in Appendix 3.

3.1 Historical costs (through calendar year 2007) for the development and acceptance gathering of ECI's voluntary risk assessment for "Copper Metal".

- Contributions at the full rate will comprise a single payment of 2 €/tonne, subject to a minimum of 10,000 €, declared in accordance with Appendix 3, Article 7.

3.2 Future annual consortium costs for secretariat, accounting and technical staff.

- Based on Article 5 of Appendix 3, the cost sharing mechanism for the sub-group "Copper Metal" is 0.05 €/T, subject to a minimum annual fee, per member, of 5,000 €.
- The cost-sharing mechanism for the sub-group "Intermediates" remains to be determined. There will be a fee of X €/T per substance registered, subject to a minimum annual fee, per member, irrespective of the number of substances registered. Both the tonnage and the minimum fees require further clarity based on the tonnages involved. First year budget figures for this category will be available at the February 2008 General Assembly.

3.3 Future annual research and analysis costs for the development of the registration dossiers for "Copper Metal" and for "Intermediates".

- Recognising the importance of these costs for companies' annual budgets, ECI will issue "reasonable estimates" for 2008 before mid December 2007. More definitive budget figures category will be available well in advance of the February 2008 General Assembly.